IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

NO. 538

PEOPLE OF THE STATE OF ILLINOIS,
Respondents,

vs.

PAUL WILLIAMS, otherwise called
Paul LeRoy Williams,
Petitioner.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Respondent.

WILLIAM C. WINES,
MARY V. NEFF,
Assistant Attorneys General,
Of Counsel.

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SUBJECT INDEX.

TABLE OF CASES CITED.

STATUTES.

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BRIEF AND ARGUMENT FOR RESPONDENT.

Opinions Below.

The opinion of the Supreme Court of Illinois is reported at 383 Ill. 348.

The sentence pronounced by the Criminal Court of Cook County upon the petitioner's plea of guilty was entered October 2, 1942.

Jurisdiction.

Respondent submits that this court should not take jurisdiction because no federal question is involved.

RESPONDENT'S ADDITIONAL STATEMENT OF THE CASE.

The petitioner completely misconceives the nature of the hearing which took place after he had entered his plea of guilty. This hearing was not a "trial," as petitioner terms it, but merely an inquiry by the court into the facts surrounding petitioner's admitted crime, so that the sentence might be adjusted according to any circumstances of extenuation or aggravation that might appear.

SUMMARY OF ARGUMENT.

I.

The trial court appointed competent counsel for petitioner, and under the circumstances there would have been reasonable time to prepare petitioner's defense, if he had had any.

II.

The trial court's acceptance of petitioner's plea of guilty complied with the Illinois statute and did not deny him due process of law.

ARGUMENT.

Petitioner makes only two contentions in his effort to persuade this court to grant *certiorari*: (1) That his counsel was not given a reasonable time to prepare his case, and (2) that the court should not have accepted his plea of guilty on the day it was made, but should have waited a few days to see if he would change it.

Both these contentions are incorrect, and will be disposed of briefly under the following headings.

I.

The trial court appointed competent counsel for petitioner, and under the circumstances there would have been reasonable time to prepare petitioner's defense, if he had had any.

Petitioner first argues that he was denied due process of law in that his counsel was not "given a reasonable time to acquaint himself with the facts in the case to the end that he may be better enabled to represent his client." (Petitioner's Suggestions, page 5.)

In support of the above contention petitioner quotes with emphasis from the famous "Scottsboro case," *Powell* v. *Alabama*, 287 U. S., the statement that the

> "duty (to assign counsel) is not discharged by an assignment *at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case.*" (Italics of petitioner.)

A comparison of the facts in the *Powell* case with those here will show that petitioner was amply afforded due process of law.

In the *Powell* case, seven negro boys were indicted for rape, the crime allegedly having taken place while the defendants and the victims, two white girls, were riding on a freight train traveling through Alabama. The trial court appointed "all the members of the bar" for the purpose of arraigning the defendants, but on the morning of the trial, six days after indictment, no counsel had as yet been appointed for any other purpose. A Mr. Roddy of Tennessee appeared on that morning, said he was a friend of Chattanooga people who were interested in the boys, that he had not been paid, that he was not prepared for trial, that he was not familiar with Alabama procedure, and that while he would act as an assistant he could not represent the boys. A Mr. Moody of the local bar then offered to "help" Mr. Roddy, whereupon the court replied,

> "All right, all the lawyers that will; of course I would not require a lawyer to appear if— (p. 56)

With this dubious understanding, the trials immediately proceeded.

The significant part of the *Powell* opinion appears at page 71, where this court said:

> "In the light of the facts outlined in the forepart of this opinion—the ignorance and illiteracy of the defendants, their youth, the circumstances of public hostility, the imprisonment and the close surveillance of the defendants by the military forces, the fact that their friends and families were all in other states and communication with them necessarily difficult, and above all that they stood in deadly peril of their lives—we think the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process."

In striking contrast to the above are the details of the present case. There is no showing that petitioner was either ignorant, illiterate or extremely young. There was

no public uprising against him necessitating his safekeeping before trial under a guard of militia. There is no showing that petitioner's home is in another state or that he has been unable to communicate with his friends or family.

While it is true that the date for petitioner's trial was set two days after his indictment, it is also true that a reputable, competent member of the Illinois bar was appointed as counsel for petitioner, that such counsel made faithful and determined efforts in petitioner's behalf, even to carrying the case to the Supreme Court of Illinois by writ of error where he filed not only brief, abstract, and reply brief, but also an additional citation of authorities and petition for rehearing, and that his espousal of petitioner's case has continued even after said attorney's death through the agency of the attorney's son, who now appears in the present case without remuneration.

It is true that on October 2, soon after counsel was appointed, petitioner changed his plea from "not guilty" to "guilty." It is likewise true that the trial court "cautioned and warned" petitioner of the effect of his plea of guilty, but that petitioner "persisted" in such plea nevertheless. (See opinion of the Supreme Court of Illinois, 383 Ill. 348, p. 348.)

In view of the demonstrated fidelity and care of petitioner's counsel, it cannot be assumed that such attorney failed to read the indictment carefully or give petitioner the benefit of his best advice. While in terms of hours or days, the passage of time between the appointment of counsel and the entry of the guilty plea was not great, the requirement of due process of law is not expressed in terms of hours or days, but refers, in a case such as this, to the adequacy of a prisoner's representation by counsel.

In this case the petitioner admitted that he was guilty of murder, after receiving the benefit of advice from his attorney, whose devotion and loyalty to petitioner's interests cannot be questioned. That his attorney's advice to plead guilty was forthcoming after two hours instead of two days is not in itself a lack of due process of law. There is no showing that petitioner asked for a continuance of his case, or that if he had asked it would have been denied.

At page 8 of his suggestions petitioner lists three duties which he felt were owing to him from his counsel, as follows:

1. Looking over and studying the evidence adduced at the trial,
2. Looking over and studying the indictment to see if there were any substantial defects therein,
3. Ascertaining if there be any new evidence which was overlooked and which might be material to the proper disposition of the case.

Petitioner expresses the opinion that "this procedure necessarily requires a few days."

As for the first duty, "looking over and studying the evidence adduced at the trial," it is not clear how petitioner thinks he was harmed in this connection. *In the first place,* there was no trial. Petitioner admitted his guilt, and the court conducted an inquiry into the circumstances of his crime merely to aid its discretion in imposing sentence. (*People* v. *Popescue,* 345 Ill. 152.) *In the second place,* it is difficult to understand just how the court's discretion would have been influenced in the direction of imposing a lighter sentence, merely by the activity of counsel in taking several days to look over and study the evidence adduced at the hearing. After his plea of guilty, petitioner was

no longer clothed with the presumption of innocence, but was an admitted criminal hoping for mercy but entitled only to justice. While petitioner had the right to plead for mercy, he had no right to ask that imposition of sentence be postponed for several days while his counsel searched the written transcript of testimony for extenuating circumstances on which to base his entreaties. Counsel was present and heard this testimony at first hand, and any extenuating circumstances surrounding petitioner's crime should have been discernible from the oral statements of witnesses at that time. What would have been gained by reading the same statements after they were written up does not appear. *In the third place,* a transcript of the testimony was furnished petitioner without cost for his use in suing out a writ of error. Although this transcript was in his possession, he voluntarily suppressed it from the record in the Supreme Court of Illinois, and rested his case there on the common law record only, so that the facts surrounding his crime were unknown to the Illinois Supreme Court when reviewing his case. This indicates that petitioner failed to find any defects in the actual conduct of the hearing, and shows that no injury resulted from the imposing of sentence before the transcript had been written up and given to petitioner.

As for the second duty, in view of the competency and faithfulness of petitioner's counsel, it must be assumed that his first act upon being appointed was to look over and study the indictment to discover any defects. Petitioner fails to allege that his counsel did not do this, and it must be assumed that he did.

As for the third duty, ascertaining if there were any material new evidence, it has no application to this case. Petitioner admitted his guilt, and in view of that plea it is difficult to perceive what "new evidence" petitioner thinks a delay of a day or two might have produced.

Moreover, even if we assume (gratuitously, of course, since there is no suggested basis for the assumption) that further time would have enabled counsel to discover important evidence favorable to petitioner, such evidence, if it existed, could have been discovered *after* sentence and could have been made the basis of a motion to vacate the judgment on a statutory proceeding in the nature of *coram nobis*. That no such motion was made argues impressively that no such evidence existed and that petitioner was not harmed.

We therefore respectfully submit that petitioner's first contention, that his attorney was not given a reasonable time to prepare the case for trial, is groundless. The amount of time given was not *per se* unreasonable, petitioner did not request more though he would undoubtedly have received more time had he so requested, and the facts show that petitioner had the benefit of able and devoted counsel. None of the inflammatory circumstances surrounding the cited *Powell* case is present here. We therefore submit that petitioner was not denied due process of law, because his counsel did have a reasonable time to prepare his case.

II.

The trial court's acceptance of petitioner's plea of guilty complied with the Illinois statute and did not deny him due process of law.

Petitioner's second contention is that the trial court showed undue haste in accepting his plea of guilty. Petitioner contends that the Illinois court should have adopted the procedure followed by a New Jersey court as described in *Hallinger* v. *Davis*, 146 U. S. 314, as follows:

> "The court refrained from at once accepting his plea of guilty, assigned him counsel, and twice adjourned, for a period of several days, in order that he

> might be fully advised of the truth, force and effect of his plea of guilty."

Of course petitioner completely misunderstands the legal effect of the above description. Even if the foregoing procedure were *required* by the New Jersey statutes, that fact would not make it mandatory in a court of Illinois. As this court said in the very case cited by petitioner (*Hallinger* v. *Davis*, 146 U. S. 314, 320),

> "This requirement of the Constitution (due process) is met if the trial is had according to the settled course of judicial proceedings. Due process of law is process due according to the law of the land. **This process in the States is regulated by the law of the State.**"

The procedure in accepting pleas of guilty in Illinois is governed by Ch. 38, Sec. 732, Par. 4, Division 13, of the Illinois Revised Statutes, 1943. The trial court complied with the requirements of that statute as to acceptance of pleas of guilty, in every respect. (Petitioner raises no issue as to the unconstitutionality of the statute itself.)

Even if the *Hallinger* case held that the New Jersey court in question was *required* to delay, as it did, for several days before accepting a plea of guilty by the prisoner, this would not bind an Illinois court which is governed by a different statute. But a careful reading of the *Hallinger* case shows that the New Jersey court was bound by no such requirement. This court merely commented on the procedure followed by the New Jersey court to show that it had been more cautious than necessary. The mere fact that a New Jersey court in 1890 "bent over backward" and exceeded the dictates of its own statute in cautioning a guilty defendant, certainly does not establish, as petitioner argues, a precedent binding upon an Illinois court in 1942.

We therefore respectfully submit that petitioner's second contention is without merit, since the trial court in this case complied with the statute governing the acceptance of pleas of guilty and committed no errors in that respect.

CONCLUSION.

In view of the foregoing considerations, we respectfully submit that petitioner was not deprived of his life without due process of law in this case, but that his counsel had adequate time to prepare his case and adequately represented him, and that the court accepted the plea of guilty in full compliance with statutory requirements.

We therefore respectfully pray that this Court dismiss the petition for writ of certiorari.

Respectfully submitted,

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Respondent.

WILLIAM C. WINES,
MARY V. NEFF,
Assistant Attorneys General,
Of Counsel.